

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-437

September 12, 2002

CENTRAL MAINE POWER COMPANY
Request for Approval to Continue Certain
Generation-Related Business Activities
(Proposed Amendment to the Lease for Cape
Station Land to FPL Energy Cape LLC)

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we grant an extension of the divestiture requirement in 35-A M.R.S.A. § 3204(5) to allow Central Maine Power Company (CMP) until September 30, 2022 to divest its interest in certain generation-related equipment and land. We further approve CMP's plan to extend its lease of the equipment and land to FPL Energy Cape LLC (FPL) until September 30, 2022, in accordance with the lease agreement and lease agreement amendment submitted in this docket. The lease agreement grants CMP an unconditional right to terminate the lease upon a 6-month notice period. We impose a requirement that CMP must exercise its 6-month notice termination provision if ordered to do so by the Commission. If the Commission orders CMP to terminate the lease agreement, then the extension of the divestiture requirement is reduced to twelve months after the order to terminate the lease.

II. BACKGROUND

On November 25, 1998, the Commission approved the sale of CMP's generation assets to FPL Energy Maine, Inc. (FPL). *Central Maine Power Company, Divestiture of Generation Assets, Request for Approval of Sale of Generation Assets*, Docket No. 98-058. In that case, CMP represented that the land in South Portland on which its Cape Station generating units were sited had potentially greater value if sold separately from the units. The units consist of two combustion turbines that burn No. 2 fuel oil with a capacity of 21MW each. Therefore, under its approved plan, CMP sold only the two turbines and "all appurtenant equipment" generating equipment to FPL, while reserving the real estate (and other equipment) for sale at a later date. The Commission's understanding was that FPL would be removing the generating equipment from the site.

CMP subsequently changed its plan and decided to lease part of the land and other assets¹ at the site to FPL, so that FPL could operate the generating unit on the Cape Station site during the approximate two-year period that FPL needed to move the units. On May 4, 2000, CMP sought approval of this amended divestiture plan and an extension, pursuant to 35-A M.R.S.A. § 3204(3), to divest generation assets after March 1, 2000. Under the lease agreement, CMP receives 50% of net operating revenues as its rent payment.

By Order on June 13, 2000 in Docket No. 2000-395, we granted CMP an extension of the divestiture requirement until April 1, 2004, and approved CMP's divestiture plan that included lease of the equipment and land to FPL until September 30, 2002. Under the lease agreement, CMP is not able to exercise any control over the generating equipment or its output. Therefore, we concluded that the lease would neither limit competition in the generation market nor limit consumers' ability to benefit from such competition. In addition, CMP asserted that the lease would reduce the level of its stranded costs, because CMP projected its lease revenue to be in excess of any revenue it would generate if it were to sell the property at that time and forego the lease payments. Moreover, the lease permitted CMP to continue to market the property and to terminate the lease on a 6-months notice if a sale became advantageous. Accepting CMP's representations, we reasoned that the lease arrangement was not inconsistent with the goals of restructuring and would likely reduce the level of stranded costs.

On July 26, 2002, CMP petitioned for approval of an amendment to the lease agreement. The amendment extends the term of the lease from September 30, 2002 to September 30, 2022. The amendment makes no other pertinent changes to the lease agreement.² CMP states that, at least at the current time, FPL no longer plans on moving the generating units, but both parties retain the right to terminate the lease on a 6-months notice. CMP states that it agreed to extend the lease term so it can continue the benefits of the lease for an extended period. During 2001, the only full year of operation of the lease, CMP received \$339,000. CMP reports that it will receive at least \$150,000 for 2002. As the independent appraisal of the sale value of the site was \$1,365,000, CMP asserts that its plan to lease the site to FPL will reduce stranded costs compared to a plan to sell the site. By the Stipulation and Order Approving Stipulation in Docket No. 2002-232 (Feb. 15, 2002), CMP must defer for future

¹The land and other assets are defined as generation assets under 35-A M.R.S.A. § 3201(10): "Generation assets' include all real estate, fixtures, and personal property owned, controlled, operated, managed in connection with, or to facilitate, the generation of electric power."

²The amendment also clarifies CMP's right to perform environmental audits, studies and testing.

offset in rates any amounts received by CMP for least of the Cape Station facilities.

III. DECISION

The Commission may extend the March 1, 2000 divestiture deadline “[i]f the extension would be likely to improve the sale value of those assets on the market or would be likely to reduce the level of the utility’s stranded costs.” 35-A M.R.S.A. § 3204(3). The Commission previously granted an extension to Bangor Hydro-Electric Company (BHE) to allow it to continue certain generation-related activities after March 1, 2000, upon determining that this would not be inconsistent with the overall goal of restructuring and would likely provide the greatest reduction in stranded costs. *Bangor Hydro-Electric Company, Request to Continue Certain Generation-Related Business Activities*, Docket No. 99-602 (Dec. 1, 1999).

The Restructuring Act establishes a fundamental principle that T&D utilities will exit the generation business and will not acquire financial interests in generation assets. See 35-A M.R.S.A. § 3204. There are limited exceptions to the divestiture requirement and ownership of generation assets not applicable to the Cape Station generating equipment. See 35-A M.R.S.A. § 3204(1) and (6). The Act grants us the discretion to extend the deadline for divesting a generation asset, as we did for the Cape Station assets in Docket No. 2000-395. At that time, a short term lease, that addressed the practical problem that FPL needed time to move the turbines and reduced CMP’s stranded cost burden, represented an easy extension to grant. CMP’s divestiture plan remained to sell the asset as waterfront property after FPL had a reasonable opportunity to move the turbines.

An extension that permits CMP to maintain its financial interest in the Cape Station generating equipment for 20 years is not as simple. Indeed, it is difficult to justify any divestiture extension of 20 years, or approve a plan that allows CMP to wait 20 years to sell a generating asset. However, in the limited circumstances of this lease amendment, we conclude that an extension to the end of the lease period is warranted.

In reaching this conclusion, we emphasize three points:

- 1) we accept CMP’s assertions that, at least currently, the lease provides the greatest stranded cost mitigation;
- 2) the generating units in which CMP has a financial interest are small, totaling only 42MW; and
- 3) most importantly, the 6-month termination provision in the lease allows us to require CMP to terminate its financial interest if we decide that the lease has become inconsistent with the goals of restructuring. Accordingly,

we condition our divestiture requirement extension and plan approval on acceptance by CMP of an obligation to exercise its 6-month termination rights if ordered to do so by the Commission.

Our decision today requires us to remain vigilant and monitor the circumstances surrounding CMP's interest in these assets. In addition, if we receive complaints from interested persons, we will inquire or even formally investigate the circumstances of the lease arrangement and will be prepared to undo the arrangement if we find that the complaints justify such a result.

We remind CMP that even accepting that today's analysis shows that the lease-and-possible-future-sale plan yields greater stranded cost mitigation than a sale-now plan, the Restructuring Act imposes on CMP a continuing obligation to review its divestiture plan and "pursue all reasonable means to reduce its potential stranded costs...." 35-A M.R.S.A. § 3208(4).

With the condition described above, we approve CMP's amended divestiture plan described in its July 26 filing and extend the deadline for CMP to divest its Cape Station generation-related land and equipment until September 30, 2022 unless otherwise ordered by the Commission.

Dated at Augusta, Maine, this 12th day of September, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

THIS DOUCMENT HAS BEEN DESIGNATED FOR PUBLICATION

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.